



On-Target Coalition

House Judiciary Committee

Testimony: HBs 5143, 5153, 5548

4/18/06

The Committee has before it today House Bills 5143, 5153, 5548, bills that together purport by their titles to clarify the right to self defense and defense of others.

However, the content of the bills clearly do not simply clarify current law but also significantly change current law by eliminating the duty to retreat when it is possible to do so with safety, creating a legal presumption that the person asserting self-defense was indeed reasonably fearful of severe harm or death from the would-be assailant, and provides immunity from civil liability and from criminal prosecution to those who kill their attackers as provided in the bill. While initially the bill forwards those provisions only in the cases of home invasion (extending the concept of home invasion to outbuildings, porches and immediate grounds of homes) and attempted carjacking, an additional section of the bill extends the provisions to any place the individual has a legal right to be. Lastly, the bill allows a person to use deadly force to prevent the commission of a forcible felony.

While the MPPGV supports the right of each individual citizen to protect him/her self and others from the threat of severe bodily harm and/or death when retreat to safety is not possible, we take exception to several provisions of these bills and are additionally concerned that the bills will establish in law values that are contrary to the building of a safe and civil society, such as those reviewed below.

We do not support, as does this legislation, the following assumptions:

- A. That lethal force should be the first line of defense when threatened.
- B. That fear and/or danger justifies suspension of rational thought.
- C. That any citizen in legal possession of a firearm may with impunity act, on an ad hoc basis, as judge, jury, and executioner of his fellow citizens – executioner in a state without a death penalty and where many of the situations designed to be addressed by this law – particularly the commission of a property felony - would not result in even a life sentence in our courts.
- D. That some citizens are not entitled to the cherished right of all to a trial by a jury of his/her peers and, instead, legally may be judged unworthy of that right by one angry citizen.
- E. That minimally trained or untrained, unregulated, unsupervised, and unaccountable civilians should have nearly unlimited authority to use lethal force in ways that are currently prohibited to our highly trained police officers.

F. That society is better served by street justice than by the rule of law – a premise well tested in our country in the past, with great detriment to us all, by those who espoused these methods of injustice out of ignorance, anger, fear and prejudice.

We find that many of the provisions of the bills are based on faulty reasoning.

A. Currently, the law provides that persons in danger retreat if possible to do so with safety, in part to minimize the risk of harm to bystanders. While provisions of the bills are intended to apply only to those who are in legal possession of a firearm (although the bills do not state this as clearly as it should) and who are not in the process of committing an illegal act themselves and/or are not at a place regularly used to forward crime, this is unlikely to reduce the risk to bystanders. In Michigan, gun owners are not required to get training in the use of their firearms unless they want a concealed carry permit. Concealed carry permit holders are required to have minimal training in the use of their pistols. The Committee would be well advised to hold a hearing in the Detroit neighborhood where an eight year old boy, standing in his own doorway, was killed several weeks ago when two groups of men decided that guns were the best way to resolve their differences. It would have been little consolation to the family or neighbors if any of the shooters had been legal gun owners.

B. While purporting to clarify the right to self-defense, these bills allow the use of lethal force not only to protect persons from bodily harm or death but to protect property only, in the case of a forcible felony (a concept with no basis in Michigan law) and criminal trespass – giving the protection of mere property a value above the preservation of life.

It appears that one paragraph of the bills tries to limit the right to use force to protect property to the use of less than deadly force in certain circumstances. This is a potentially dangerous concept when firearms are involved – it is as difficult to hit a moving target to wound but not kill as it is to hit it in order to surely kill. And, of course, if the target also has a firearm, the anger generated by being shot short of death may cause retaliatory fire.

C. The bills make unwarranted assumptions about the intent of persons breaking into a dwelling or residence in assuming both that the person knows that the dwelling is occupied at the time and/or that the person's intent was harm to others as opposed to theft. While the person whose home is invaded should surely be allowed to protect himself, he/she should not be excused from assessing the degree of danger before making a decision to shoot an intruder, if only to ensure that he/she does not unintentionally kill a family member.

D. These bills fail to specify that should the person mistakenly kill or injure a by-stander (when standing their ground in any place that he/she has a legal right to be) that he/she would surely be held accountable to the fullest extent of criminal and/or civil law.

E. These bills fail to require that the person inform law enforcement at the earliest possible moment consistent with safety, be that before or after a lethal retaliation.

F. The bill fail to establish immediacy of danger as a decision making factor. Under the provisions of these bills, one could be informed an hour ahead that an attacker is coming, fail to retreat to safety to protect one's self in that hour, fail to notify law enforcement, and still be justified in killing the attacker at the end of the hour.

It is particularly troubling that while its supporters of this legislation insist that the legislation is necessary to prevent those who are simply protecting themselves from being wrongly imprisoned and/or impoverished by the costs associated with having to defend themselves in a court of law, they have not put forward any examples of this actually happening, stating simply that the fear that it might happen is enough to justify the bill, including the dangerous provisions listed above.

Last, but not least, it is additionally troubling to see state government supporting using weapons, up to and including death, as a first resort for problem solving while so many in our state are working diligently to teach our youth that force must be a last resort.

A more productive use of legislative time for safety from crime can be achieved by the following measures:

- A. Insisting on better funding for law enforcement.
- B. Passage of laws to hold legal gun owners accountable for keeping track of their firearms, remembering that, without exception, every gun in the hands of a criminal started out in the hands of a legal owner.
- C. Working within our communities to teach and practice non-violent problem solving methods that advocate that physical force – and particularly lethal force – be used only as a last resort.
- D. Modeling as adults what Michigan spends millions of dollars teaching our youth – that non-violent problem solving is the most effective “weapon” of choice for our society’s true heroes.
- E. Using lethal force as a last resort when there are not other reasonable alternatives available to protect oneself from imminent injury or death.

Together and individually, these bills are poor legislation, but worse, they promote dangerous and ill-advised public policy.

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